

Development (19 34) Department

ms SERIES.

G.O. No. 1464

DATED 23. X. 34

[Despatch Abstract.]

Cooperative Societies Pub No. 93 of 1934
 in the Court of Dist. Judge, South Madras
 Liquidation of Hejmady Cooperative Soc.
 Second appeal in the High Court
 Govt Pleader, Madras — Appearance
 — Permitted.



20. 4653-11
15/10-84 C.F. 30.

Co-operative DEPARTMENT.

Received 19

Registered 19

Subject.

Liquidation--Hejmady co-operative society--
South Kanara district--contribution order
against Veerayya Naick--second appeal in the
High Court --permission to engage the Govern-
ment Pleader, Madras on behalf of liquidator.

ENCLOSURES.

No.

F.No. 5321/34

Spare copies

Station Madras, Dated the 12th October 1934.

From (Name) T.Austin Esquire I.C.S.,

(Designation) Registrar of Co-operative societies,

Madras.

To The Secretary to the Government of Madras,

Development Department.
Fort St. George, Madras

Sir,

As the affairs of Hejmady co-operative society in the South Kanara district were very unsatisfactory its registration was cancelled and the Deputy Registrar of Co-operative Societies, Mangalore, was appointed as its liquidator. When the liquidator took charge of the records of the society, he found that the outside liabilities were far in excess of the realisable assets and he had to enforce unlimited liability against some solvent members to make up the deficiency in assets. One such member against whom a contribution order enforcing unli-

unlimited liability was passed was one Veerayya Kayak.

This person denied his membership in the society but as the records clearly showed that he was a member, the liquidator passed a contribution order against him for Rs 400/-. He ~~filed~~ filed an appeal to me under section 47(8) of the Co-operative Societies Act but I declined to interfere in the matter.

2. The Liquidator then sought to execute the contribution order through the District Munsiff's court, Karkal. The contributory denied his membership before the District Munsiff. The Munsiff held that the liquidator had no jurisdiction to decide the question whether the person was a member or not, that it was a matter to be decided by the Civil Court and that the contribution order was therefore ultra vires. The Court therefore declined to execute the order. The liquidator then asked ~~asked~~ the District Munsiff to hold an enquiry into the question of fact whether Veerayya Nayak was a member or not; the District Munsiff refused to do so on the plea that as an executing court he could not go into matters other than those relating to execution, discharge or satisfaction. The decision of the District Munsiff being unfavourable, the liquidator filed an appeal in the District Court, Mangalore. Under my instructions the liquidator brought to the notice of the District Judge through his Vakil, the judgment of the Hon. Mr. Justice V.V.Srinivasa Ayyangar (copy enclosed) "in the matter of A.Sivasankara Mudaliar and in the matter of Royapettah Co-operative Society" (an unreported case of the Madras High Court) wherein the Hon. Judge has given a clear ruling that "the liquidator is the court that is constituted by the Act for the purpose of determining not only the amount of contribution but also who the present and past members are who are liable to make the contribution". The District Judge, "without taking any notice of this decision decided that the Co-operative Societies Act did not vest the liquidator with the powers to decide whether a person was

A
was a member or not, that where a party denied his membership the liquidator had no jurisdiction to pass an order against him and that the matter should be decided by a civil court and he therefore dismissed the appeal preferred by the liquidator. Copies of judgments of District Munsiff and District Judge are enclosed.

MS-946
MS-10-1146
MS-946
3. The decision of the District Judge, if ~~the~~ followed, will have far-reaching effects on liquidation proceedings and the liquidator's work will be hampered and delayed inordinately. The liquidator will have to go to the civil court to get a decision regarding membership in every case where the contributory proposed to be proceeded against under section 47 (3) (b) of the Co-operative Societies Act chooses to deny his membership. Such a procedure will necessarily involve delay and expenditure which the liquidator cannot afford to incur. In the course of winding up of co-operative societies the liquidator will have to pass a number of contribution orders under section 47(3)(b) to collect the debts and contributions to the assets of the society, and if the decision of the District Judge, South Kanara, is known to the public at large, as is bound to happen, unscrupulous persons who are members of co-operative societies will deny their membership and the liquidator's work will come to a stand-still as he cannot proceed with his work till the civil court decides whether these persons are members or not.

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4. Section 47 (6) of the Co-operative Societies Act says that a civil court shall execute the contribution orders passed by the liquidator as if they are decrees of that court. The word "shall" denotes that it is obligatory on the part of the civil court to execute the order, that it has no option in the matter and that it cannot go behind the order and examine its validity or otherwise. In my opinion the District Munsiff Karkal, was wrong in refusing to execute the contribution order and in questioning the jurisdiction of the liquidator to pass

pass the order. Section 48 of the Act prohibits any civil court from taking ~~any~~ cognizance of any matter connected with the winding up of a society and the remedy open to an aggrieved party is to appeal to the Registrar under section 47 (8) of the Act. In the present case under reference the appeal to Registrar was decided in favour of the liquidator. Even though the ^{Act} Government may not, in so many words, give power to the liquidator to decide who are members and past members, yet the Act certainly gives no power to the civil court to hear objections from persons denying liability.

5. The liquidator who is on the spot and who has the records of the society in his possession is the best judge to decide whether a person is a member or not and I ~~am~~ consider it very necessary that the decision of the District Judge, South Kanara, should be revised by the High Court in a second appeal. What is wanted is a ruling from the High Court that no civil court can hear objections from persons denying liability; such a ruling will effectively check interference from civil courts whether the liquidator has the power to decide who are members and past members. As the matter is a very important one affecting the jurisdiction of liquidators appointed under the Co-operative Societies Act, I request that Government may be pleased to permit the Government Pleader, Madras, to appear on behalf of the liquidator in the High Court and conduct the second appeal. His fees will be met from the funds of the liquidated society and Government need not therefore incur any expenditure on this account.

6. The time for filing the appeal will expire on 21st November 1934. I request that Government may be pleased to issue orders at a very early date so that the Deputy Registrar and liquidator may have time to file the appeal.

I have the honour to be,
Sir,
Your most obedient servant

[Signature]
For Registrar.

13.10.34

12.10.34

In the court of the District Judge of South Kanara.

^{day}
saturday, the 25th/ of August 1934.

Present;-- S.G.Srinivasa Acharya Esq, B.A., B.L.,
District Judge

Appeal suit No. 93 of 1934.

Between:--

Hejmady co-operative society by 'official' liquidator K.
Sarvothama Rao Appellant.

and

H.Veeraiya Naika Respondent.

filed in On appeal from the order of the Court of the District Munsif of Karkal, dated the 3rd February 1934, and made in

R.E.P. No. 1137 of 1933 (contribution order No. 50 of 1933 on the file of the official Liquidator of Hejmady Co-operative Society No. 3689 and the Deputy Registrar of Co-operative Societies, Mangalore).

Between:--

Hejmady co-operative society by official liquidator
K.Sarvothama Rao Petitioner

and

H.Veeraiya Naika Respondent.

This appeal coming on for hearing this day in the present of Mr. A.Ranganatha Rao, Advocate for the Appellant, and of Mr. A.Varada Rao, Advocate for the Respondent, the Court delivered the following

Judgment:-- The appeal arises in connection with an order passed by a Liquidator under section 47 (3) (b) of Madras Act VI of 1932 relating to Co-operative Societies. Under that section the Liquidator is authorised, subject to the control of the Registrar, to determine from time to time the contribution to be made or remaining to be made by the members of the Co-operative Society under liquidation.

2. In this case such an order for contribution has been made against the present Respondent and under the provisions of section 47(6) that order was sought to be executed in the court of the District Munsif of Karkal. It is admitted that before the Liquidator himself the present Respondent contended that he was not a member of the Society and was therefore not

not liable to contribute anything and on this objection the learned District Munsif has held that the order of the Liquidator which in terms directs the Respondent as member No. 100 to contribute a specific amount is virtually an order which also decided that the Respondent was a member of the society and he further held that the Liquidator had no power to decide whether or not a person was a member and consequently he held the order to be a nullity and incapable of execution. He therefore declined execution. He was next intited to go into the question ~~quanti~~ himself whether or not the present respondent was a member. He declined to do so on the ground that whatever might be the opinion he might arrive at after holding such an inquiry, it would not confer upon the liquidator the power to have passed such an order as was sought to be executed and he therefore held that any inquiry was unnecessary and he dismissed the execution petition. The Liquidator has now appealed.

3. The point therefore for determination is whether or not the order involves a determination that a particular person is a member and whether the Liquidator has jurisdiction to determine such a point.

4. Reference has been made in the Lower Court to the decision in Mukand Lal Vs. Malhotra Bank, Hafizabad, A.I.R. 1933 Lahore 442. That was a case arising under the parallel provisions of another ~~enactment~~ enactment and there the aggrieved party had himself brought a suit to set aside the order of the Liquidator on the ground that he was never a member and his contention was upheld. The learned advocate for the appellant says that the effect of that decision was only to hold that the Liquidator had no power to determine finally whether or not a party was a member and that in fact the Liquidator has power subject to revision by a Civil Court. It must be pointed out that no words in that decision support such a position. Secondly the wording of the Act in question (Madras Act VI of 1932)

would not tolerate such a view; for under section 47(8) the only remedy of a person aggrieved by any order of the Liquidator is to appeal to the Registrar against such order. The decision in 1933 Lahore does not refer to any appeal to the Registrar ~~against such order~~ and does not discuss the liability of the Registrar's order or the Liquidator's order being reviewed by the Civil Court. Section 48 of Madras Act VI of 1932 further says that no civil court shall take cognizance of any matter connected with the winding up or the dissolution of a society under that Act and that when a Liquidator has been appointed no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to any terms which he imposes. Consequently it must be held either that this matter is outside the provisions of the Act and therefore one which a Civil Court ~~is~~ is competent to entertain or that it falls inside the provisions ~~of~~ and that consequently no such review by a Civil Court can lie at all except under the permission of the Registrar and subject to his conditions. There is no midway course possible so as to hold that the Registrar or Liquidator has initial power to determine who is a member and that the Civil Court can subsequently review the decision in a suit before it. The argument raised by the learned advocate for the appellant is just possible because in that decision what happened was that the Liquidator's order was followed by a suit. But the matter has to be really decided as a question of principle. Primarily under section 9 of the Civil Court's Act it is the Civil Court that has to determine every matter dispute ~~next~~ between ~~the~~ any parties. But where a special tribunal is created by the Legislature that may displace a civil court. The question then would be whether such a tribunal has been created and if so, for what matters. Now section 47 (3)b says "determine the contribution to be made by the members". Do these words include deciding the question whether or not

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not any person is a member? The argument based upon inconvenience is mentioned, that any member may falsely allege that he is not a member and protract liquidation. If so, the possibility that his denial is true should also be contemplated and the man would then be deprived of his access to a Civil Court. But the question is as between the inconvenience of any one of, say, a hundred members falsely saying that he is not a member and the inconvenience of, say, any one of 20 million persons who never were members being made liable to the order of a Liquidator and being forced to initiate proceedings at their own expense to have the order set aside if they want to escape it. This is pointed out in the Lahore decision above referred to and if the argument based upon inconvenience can be resorted to at all, it is against the Liquidator. Apart from it, the pure question of law is whether the words in the section 47 (3) (b) are by themselves to confer upon the Liquidator power not only to determine the amount of contribution but also to determine the fact of the membership. The words themselves are not sufficient to include the disputed point. The context also must be considered. In the case of Co-operative Societies the object is to simplify many matters of procedure. In the case of any other company regular proceedings in suit would be necessary in claiming contribution. And that is avoided here by specific words. If it was also considered necessary to simplify the matter of determining the membership express provisions should have been inserted in the clause. The amount of contribution is a ~~process~~ matter more or less for arithmetical calculation and there is nothing unjust or startling in the legislature providing that persons, who are admittedly members of a co-operative Society, agreeing to be bound by its special provisions, may have this simple matter settled by a Liquidator whereas liability of a member involves disputed points of fact and law and affects persons who might not

not be members and where there are no express words transferring these questions to the special tribunal in the shape of Liquidator, it must be held on principle that the Civil Court's jurisdiction ~~in the shape of Liquidator~~ has not been displaced by the specific enactment. The result therefore was that where a party denied that he was a member there was no jurisdiction to pass an order against him and when the order was a nullity the learned District Judge was right not only in declining to execute the order but also in declining himself to consider a further point whether or not the Respondent was a member. The order appealed from is therefore correct and the appeal fails and is dismissed with cost.

Pronounced by dictation to the shorthand-writer in open court, this 25th day of August 1934.

Sd. S.G. Srinivas. Acharya,

District Judge.

13/10/34

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saturday, the 3rd day of February 1934.

Regular execution petition No. 1137 of 1933.

(Contribution order No. 50 of 1933 on the file of the Official Liquidator of ~~X~~ Hejmady Co-operative society No. 3689 and Deputy Registrar of Co-operative Societies, Mangalore.)

— — —

Hejmady co-operative society, by official liquidator,
K.Sarvothama Rao Petitioner

H. Veeraiya Naika and

Respondent.

This petition coming on for final hearing on Friday, the 2nd~~day~~ day of February 1934, before me in the presence of Mr. P. Ramachandra Rao, Vakil for the petitioner, and of Mr. P.V. Upadhyaya, Vakil for the Respondent, and having stood over to this day for consideration, the court delivered the following

G R D E R:-- This is an execution petition filed by the Plaintiff, decree-holder, against the defendant, judgment-~~holder~~ debtor, in the above said contribution order No. 50 of 1933 for attachment and sale of the debt specified in the schedule due to the Respondent under Order XXI Rule 46.

2. It is contended by the Defendant that the liquidator had no jurisdiction to decide whether the Defendant was a member of the Co-operative society or not and therefore his decision is ultra vires and that inasmuch as the order is made without jurisdiction it should not be executed by this Court. He relies upon a decision by the Lahore High Court reported in 1933 Lahore 442. Though the question in that case was whether the Civil Court had jurisdiction to decide whether a particular ~~XXXXXX~~ person was a member of the society or not, during the decision their Lordships had to consider the powers of the liquidator appointed under the Act and state that the only power given to the liquidator is to determine the contribution to be made by a member and that he is not given the power to determine whether a particular person is a member and that if any one disputes his membership the dispute must be

must be decided by some tribunal before any question of contribution can arise. The wording of clause 3 (b) of Section 47 of Madras Act VI of 1932 which governs this case is also to the same effect. Relying upon the said decision I hold that the liquidator had no jurisdiction to decide whether the Defendant herein was a member or not. It follows therefore that the order made by him in this case is without jurisdiction.

3. The vakil on behalf of the liquidator asks me to hold an enquiry into the question of fact whether the Defendant was in fact a member of the society or not. I do not think that it is a question which can or ought to be decided by an executing Court. The questions that can be decided by an executing court should relate to execution, discharge or satisfaction. I am of opinion that the question whether the defendant was a member of the society or not is not of such a nature. According to the ruling relied upon the decision of the liquidator is without jurisdiction ~~jurisdiction~~ because the question of membership of a person cannot be decided by him. Any decision by this Court regarding the correctness or ~~or~~ otherwise of that fact cannot make it intra vires.

4. Petition is therefore dismissed with costs.

Pronounced in open court, this 3rd day of February 1934.

Sd. D. Rangayya,
District Munsiff.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Ordinary Original Civil Jurisdiction.

The 25th Day of January 1926

THE HONOURABLE MR. JUSTICE SRINIVASA AYYANGAR

In the matter of A. Sivasankara Mudaliar

and

In the matter of the Royapettah Co-operative
Society No. 1667.

J u d g m e n t.

This is an application by one A. Sivasankara Mudaliar for an order under the provisions of Section 45 of the Specific Relief Act to the effect that an order passed by the liquidator appointed by the Registrar of Co-operative Societies in respect of the Royapettah Co-operative Society No. 1667 should be cancelled, that the liquidator should be directed to refrain from executing the said order pending the disposal of the application, that it should be declared that the said order is illegal and not binding on the applicant and that he is not liable to make any contribution. Objection has been taken to the maintainability of this application under the provisions of section 45 of the Specific Relief Act.

The first objection that has been taken is that this liquidator cannot be regarded as a public officer within the meaning of Section 45. In the view that I have taken of this application it seems to me unnecessary to decide this point. I am not inclined to agree with the contention that a person who is vested with certain judicial powers in connection with the working of Co-operative Societies should not be regarded as a public officer. If I had agreed with the petitioner that this was otherwise a proper and sustainable application, I may state that I would have been inclined to regard the liquidator as a public officer, but as I have stated, it is really unnecessary for me to decide the point.

Under the provisions of Section 45 the Court has got power to order something that is about to be done to be foreborne or done by the public officer concerned. This main prayer in this application

application is to cancel the order made by the liquidator adjudging that the petitioner is a past member and, therefore, liable to contribute within the meaning of Section 23 and 42 of the Co-operative Societies Act II of 1912.

The only other relief that is asked for is an interim relief restraining the liquidator from executing this order pending the disposal of this application. The learned vakil for the petitioner argued as though the main application was for an order to direct the liquidator not to execute the order permanently. No such prayer is included in the application; but I am not disposed to be technical and I shall deal with this application as though such prayer was contained in the application. Assuming therefore that the prayer in this application is for an order permanently restraining the liquidator from executing the order, the question to be determined is whether application for such relief is competent. So far as setting aside the order is concerned, I am ~~perfect~~ perfectly clear in my mind that I have no jurisdiction to do so, because such a thing does not fall within the terms of the section and I ~~am~~ cannot possibly regard that as an order directing a person to do what he is about to forbear from doing or an order directing him to forbear from what ~~is~~ he is about to do. So far, therefore, as setting aside the order is concerned as the order ~~is~~ has been made already, I have no jurisdiction under Section 45 of the Specific Relief Act to make such an order. But it is possible that the Court might interfere in such cases by issuing an order directing him to forbear from doing an act, as in this case executing the order; but clause(b) of the proviso to Section 45 states that the doing or the forbearing which the Court is about to order must be clearly incumbent on such person. If I have no power to set aside the order, I do not see how it is clearly incumbent on the officer not to execute the order which, I must assume, had been properly passed. But even assuming that it would be competent to the Court for the purpose of considering the present application to have regard ~~to~~ to the original order itself that has been passed, the matter

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matter stands thus. As a liquidator he is authorised under Section 42, Clause 2 Sub-Clause(b) to determine the contributions to be made by the members and past members of the society respectively to the assets of the society. The learned vakil for the petitioner has contended that this rule gives the liquidator power only to determine the contribution, that is to say, the amount of the contribution and does not vest him with power or jurisdiction to determine who the ^{past} ~~present~~ or present members are who are liable to make the contribution. It is impossible really to accede to such a contention. In my view the liquidator is the Court that is constituted by the Act for the purpose of determining not only the amount of the contribution but also who the present and past members are who are liable to make the contribution.

The further argument has been submitted on behalf of the petitioner that in determining that the petitioner was a past member and therefore liable to contribute, the liquidator has acted arbitrarily, no doubt, the word "arbitrary" has been used, but all that I have been able to gather from the argument before me was that on a ~~proper~~ proper construction of Section 23 of the Act the liquidator ought to have held that the petitioner was not a past member and that, therefore, he was wrong in finding that he was a past member, and as such liable. When the legislature constitutes a Court for determining certain things, the determination by such court must be regarded as final, subject, of course, to any appeal or right of appeal provided for in the enactment itself. Such a right of appeal is contemplated under clause 4 of Section 42, but apparently the Rules made under the Act have not provided for such an appeal. I must, therefore, take it that for some reason best known to the legislature no provision has been made for an appeal. Every Court and Judicial Officer is entitled to determine the question before it and it cannot be said that the mere fact that it has decided the question wrongly or is about to decide the question wrongly will make the question one of jurisdiction or absence of

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of jurisdiction. If, as I have found, the liquidator is the person entitled under the Act to determine who the past members are and how much ~~xx~~ they are liable for to the society, then it follows that the liquidator has a right to determine that question, and it is possible that in some cases he may go wrong. The mere fact, therefore, that such a Judicial Officer has gone wrong or is about to go wrong in his judgment is no reason for invoking the powers under Section 45 of the Specific Relief Act. It is only in very clear cases where a public officer is about to exercise a jurisdiction not vested in him under the law that the powers granted under the Section, can, in my judgment, be exercised.

From all this it follows that not only have I no power to set aside the order made by the liquidator but that I have no power also to restrain him by any order from executing the order he has already made. It is possible that the order of the liquidator was wrong and that the result of this present enactment and the Rules made under it is such that the petitioner has been left entirely without any remedy whatever in the face of such a wrong order. But it seems to me that this is scarcely a matter in which I can do anything more than merely express my sympathy with him. I have, therefore, come to the conclusion that the present application is not competent under Section 45 of the Specific Relief Act and that it must, therefore, be dismissed with costs. Ordered accordingly.

Sd/ V.V.S.
January 25th, 1926.

16 Sept

1. Letter from Suit - deemed official in representation
2. Permission to engage the Govt Pleader

Madras, on behalf of liquidator

The Heymady Coop Society.

CNO 4655. III/24

To: A.S.

Hp-1-4-CF

Please see the Regr's letter in the C

The history of the suit in question

Hp 1-34

Contained in paras 1 and 2 of the Regr's letter.

A on Hp 2-34

The Dist Judge South Kanara has decided

that the Coop Societies Act did not vest
the liquidator with the powers to
decide whether a person was a member
or not, that where a party denied his
membership the liquidator had no jurisdiction
to pass an order against him and that
the matter should be decided by a
Civil Court and therefore dismissed the
appeal preferred by the liquidator.

para 3 p 34

The Regr therefore anticipates
that such a decision will handicap
the liquidator's work and delay his
proceedings till the Civil Courts decide
whether the persons are members or not
of a Society. He therefore considers it
very necessary that the decision of the

para 5 p 44

Hp 5-94

172

High Court District Judge should be
 revised by the High Court in a second appeal
 As the questions raised is a very important
 one affecting the jurisdiction of
 liquidators the Regt's request to
 permit the Govt Pleader to appear on
 behalf of the liquidator in the High Court
 and conduct the appeal may be agreed to.
 Govt will not incur any expenditure
 on the account as the Pleader's fees
 will be met from the fund of the
 Liquidated Society. The Regt may be
 asked to place himself in communication
 with the Govt Pleader. A Draft order is
 submitted for approval

M. R. The decision will be of
 16.10.34 18.10.34 for recording information.

PK
 1.8.34

Obviously, & on the basis of the unre-
 ported ruling cited it looks as if a second
 appeal had a good chance of success.

19/10

H. M. 2

19.4.34

22

When despatched.

Date.

Initials.

SUBJECT:-

Coop Societies

Suit no 93 of 1934

In the Court of Mr Judge South Kanara
Liquidation of Hemadry Coop Society
Second appeal in High Court
~~Engagement of Govt Pleader Madras - appearance~~
Permitted -

READ AGAIN _____, dated _____

READ ALSO :—

No. 4655 III From the

Regr of Cs Fin. 5321/24

, dated 12.10.1986.

<u>Order</u>	<u>Ms.</u>
<u>Resolution</u>	<u>Rout.</u>

No. 1464 dated _____

2B. F.

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10a 5/4g

The Govt permit the
Govt Pleader Madras to appear
on behalf of the Dy Regr of Coop
Society Mangalore who is also
the liquidator of the Heymady
Coop Society South Kanara in and
connection with the ^{second} appeal
to be filed in the High Court
against the order of the Dy Judge
South Kanara in Suit no 93 of 1984

145-90

The Regt is
requested to place himself in
communication with the Govt
Pleaser Madras.

The Regr. is also

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requested to obtain and
submit for the information
of Govt a copy of the
Judgment of the High Court
in the said appeal

Xy 16th Dec 1870-21
R.L. 1870
Att 19/10

To the Repro of Govt
The Govt Pleader
Madrass
(a to)

27/1/21



Judicial

DEPARTMENT.

19

Registered

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Subject.

Co-operative Societies - Suit No.93 of 1934, District Court, South Kanara - Liquidation of the Hejmadi Co-operative Society - Second appeal - filed.

after the suit is (B) *Enst 5332 (11) 27.11.34*
Comments to the Regr of coop

Solicitor:

RR
25/11

ENCLOSURES.

No.

Spare copies

To Mr. Ry. P. Venkataramana Rao
28.11.34
No. 1840.

Station *M a d r a s.*, Dated the 20th November '34.19

From (Name) *M.R. Ry.,* Rao Bahadur P. Venkataramana Rao A.V.L.,
(Designation) Government Pleader,
M a d r a s.

To The Secretary to the Government of Madras,

Development Department.

Sir,

With reference to G.O.No. 1464 Ms., Development, dated 23-10-1934, I have the honour to state that a Civil Miscellaneous Second Appeal has been preferred to High Court yesterday against the order of the District Judge of South Kanara in A.S.No. 93 of 1934 on his file.

I have the honour to be,
Sir,

Your most obedient servant,
P. Venkataramana Rao
Government Pleader.

To A.S.

Submitted for perusal.
May be lodged and stitched
with G.O. 1464 Ms. D. 23-10-34

(B)

M
28/11/34

CO-OPERATIVE. DEPARTMENT.



Received.....

19

Registered.....

8809

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Subject.

Liquidation - Hejmadi Co-operative Society - South Kanara
District - Suit No.93/1934 in the Court of the District
Judge, South Kanara - Second appeal in High Court.

ENCLOSURES.	
No.....	✓
Spare copies.....	

D: F No. 5321/34.

Station..... M a d r a s., Dated the..... 22nd March..... 19 39.

From (Name)..... S. A. Venkataraman Esq., I.C.S.,
(Designation) Registrar of Co-operative Societies,
M a d r a s.

To The Secretary to the Government of Madras,

DEVELOPMENT - Department.
Fort St. George, Madras.

Sir,

D.

Ref: G.O.No.1464 Ms.Development dated 23-10-34.

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The High Court in its judgment in the second appeal, restored the case to the file of the District Munsif of Karkal for disposal according to law after finding whether the respondent was a member of the society or not. A copy of the judgment is enclosed.

2. Before the case could be disposed of by the District Munsif as directed by the High Court the parties effected a compromise. The Deputy Registrar has therefore

In the High Court of Judicature at M a d r a s.

Thursday, the sixth day of October, One Thousand
Nine hundred and thirty eight.

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Present: The Hon'ble Mr. Justice King.

Appeal against Appellate Order No. 30 of 1935 Hezmady
Co-operative Society by the present Official Liquidator Mr.
K. Sarvothama Rao (Vide endorsement of 28-2-38 of the Advocate
for the appellant on the Vakalat filed by him on 29-9-38.

Appellant (Petitioner)

H. Veeraiya Naika, Respondent (Respondent).

Appeal against the order of the District Court of S. Kanara
dated 25-8-1934 and made in A.S.No.93 of 1934 preferred against
the order of the Court of the District Munsiff of Karkal dated
3-2-34 and made in R.E.E.No.1137 of 1935.

This appeal coming on for hearing the Court delivered the
following Judgment.

This is an appeal arising out of an application by the
Liquidator of Co-operative society under section 47(6) of the
Madras Co-operative Societies Act. Section 47(3)(b) describes
the powers of the Liquidator in the following terms:-

"to determine from time to time the contribution to be made
or remaining to be made by the members or past members or by the
estates or nominees, heirs or legal representatives of deceased
members or by any officers or former officers to the assets
of the Society such contributions including debts due from such
members or persons". The Liquidator in the present case passed
an order determining what contribution should be made by the
members under this sub-section and applied to the Court under
sub-section (6) which runs as follows: "Save as provided in
sub-section (5) orders under this section shall on application
be enforced by any Civil Court having local jurisdiction in
the same manner as a decree of such Court" to enforce the order
against the Respondent. The Respondent raised the plea that
he was not a member of the society and therefore was not bound
by the Liquidator's Order.

Both the Courts below instead of adjudicating upon this plea have held (1) that the Liquidator had no jurisdiction to decide whether the Respondent was a member or not and (2) that the Court itself to which the application was made under sub-section (6) would be equally powerless to decide this question.

It is very difficult for me to understand how the Courts below could have brought themselves to reach a conclusion like this which is so manifestly inconvenient to everybody concerned in the case. It is quite obvious that in one sense the liquidator must have jurisdiction to decide who are members and who are not.

Otherwise it is of course impossible for him to pass any kind of intelligible or reasonable order under sub-section (3) (b). The whole question of the calculation of the contribution to be made by the members will of course depend upon the number of these members. Unless the liquidator can satisfy himself atleast provisionally as to the number of members in the society no order under the sub-section will be possible. The matter has been considered to some extent by a Bench of This Court of which I was a member in *Vaikunta Bhat V. Sarvothama Rao* 59, Mad.895. All that is stated in that judgment is "We are unable to find in the Act any clear indication that the Liquidator can determine in such a way that this determination is not subject to be set aside by the Civil Courts, who are liable either as members or past members of the Society to contribute to the assets of the Society." The situation therefore is that in the present case, the Liquidator has decided that the Respondent is a member. This decision would be subject to any proceedings which may be taken by either party in the Civil Court to set it aside. Neither party has taken any such proceedings. The Liquidator however relying on his own view of the status of the Respondent has applied under sub-section (6). The Respondent raised the plea that he is not a member. That plea when analysed amounts to this, that the liquidator has no jurisdiction to pass the order against him which he now wishes the Court to enforce. When a plea is raised involving the question of the nullity of

Dev. Dept.

Please see the letter from the
Regr on pp. 1-5 of

A reference is forwarded to

⑥ pp. 18-19 at D para 2 of the G.O. 1464 Dev. date
23. 10. 1934. ^{as the Reg's letter is to it.} Since the parties effected

a compromise before the suit is
finally disposed off of no
action is called & this may be
filed with the G.O. referred to above.

~~10/10~~ No action is necessary. The papers may be

27/3. Lodged & added to the f.o. at (D)

1/2
28/3

92
30/3

1/2
1/4/39